

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of: Manfred HEIM

Application Serial No: 10/504,816 (Now U.S.
Patent No. 7,611,168)

Filing Date: August 17, 2004

Title: Security Document and Security Element
for a Security Document

Group Art Unit: 3725

Examiner: Pradeep Choudary Battula

Confirmation No.: 5582

Docket No.: 2732-139

PETITION TO CORRECT PATENT TERM ADJUSTMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Patentee requests that the Office revise the Patent Term Adjustment (PTA) calculated in connection with the above-identified now issued U.S. Patent. The number of days calculated by the Office was 471. However, under the recent Federal Circuit decision in *Wyeth v. Dudas*, Patentee believes that he is entitled to a patent term adjustment of 655 days.

As articulated by the Federal Circuit, the PTA should be based on the number of "A" delays plus the number of "B" delays minus any overlap between the two and the applicant's delay. See *Wyeth v. Kappos*, 591 F.3d 1364, 1369-1372 (Fed. Cir. 2010) (affirming a district court ruling finding that the PTO had been improperly calculating the PTA). "A" delays include time periods where the PTO has failed "to comply with various enumerated statutory deadlines: fourteen months for a first office action; four months to respond to a reply; four months to issue a patent after the fee is paid; and the like." *Wyeth v. Dudas*, 580 F. Supp. 2d 138, 139 (D.D.C.

Sept. 30, 2008). "B" delays include the time period between the 3 years from the filing date and when prosecution is closed. *Id.* at 140.

Thus, applying *Wyeth*, the proper amount of PTA is 655 days, not 471, and the patent is entitled to an additional 184 days of PTA. In this case, the following dates apply:

Filing date = August 17, 2004
14 month date = October 17, 2005
Three year date = August 17, 2007
First Office Action = April 4, 2007
Issue Date = November 3, 2009
"A" delays = 534 days
"B" delays = 123 days
Overlap = 0 days
Applicant delay = 2 days
Total PTA = First period + Second Period – Applicant Delay =
$$534 + 123 - 2 = \underline{655 \text{ days.}}$$

Patentee, therefore, requests appropriate correction of the PTA. Authorization is hereby given to charge any fee deemed necessary in connection with the filing of this paper, or credit any overpayment, to Deposit Account No. 02-2135.

Date: April 30, 2010

Respectfully submitted,

By:

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